

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:)	
)	ORDER NO. R8-2016-0029
Modified Plastics Inc.)	
1240 East Glenwood Place)	SETTLEMENT AGREEMENT AND
Santa Ana, CA 92707)	STIPULATIONS FOR ENTRY OF
Attn: Attilio Giovanatto)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER

INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Order No. R8-2016-0029 ("Settlement Agreement" or "Stipulated Order") is entered into by and between the Division Chief of the California Regional Water Quality Control Board, Santa Ana Region ("Regional Water Board") on behalf of the Regional Water Board Prosecution Team and Modified Plastics, Inc. ("Discharger") (the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of penalties assessed to the Discharger for violations subject to administrative civil liability pursuant to California Water Code (hereinafter Water Code) sections 13399.30 and 13399.33, subdivisions (a) and (d).

RECITALS

1. The Discharger operates an industrial facility engaged in plastic materials manufacturing located at 1240 East Glenwood Place, in the City of Santa Ana. Plastic materials manufacturing is an industrial activity as described in Standard Industrial Classification (SIC) code 2821.
2. On April 1, 2014, the State Water Resources Control Board (State Water Board) adopted a new statewide Industrial General Permit for Storm Water Discharges Associated with Industrial Activities (Order No. 2014-0057-DWQ)(hereafter "General Permit"). This permit became effective July 1, 2015 replacing the previous storm water Industrial General Permit, Order No. 97-03-DWQ. By July 1, 2015, the new General Permit required dischargers to register for coverage by certifying and submitting the following documents via the State Board's Storm Water Multiple Application and Report Tracking System (SMARTS): a completed Notice of Intent (NOI) and signed certification statement; a copy of a current site map from the Storm Water Pollution Prevention Plan (SWPPP); and, the SWPPP.
3. The Discharger obtained coverage under the previous General Permit (Order No. 97-03-DWQ) on November 21, 2007 and was designated with a Waste Discharge Identification Number (WDID) of 8 30I021297. The Discharger was required to recertify for coverage under the new General Permit via SMARTS; email submittals are not permissible.

4. Due to a technical issue that affected the bandwidth of SMARTS and restricted access to the database, the July 1, 2015 deadline to obtain coverage under the General Permit (Order No. 2014-0057-DWQ) was extended to August 14, 2015.
5. The Discharger did not obtain coverage under the General Permit by August 14, 2015. Therefore a Notice of Non-Compliance (NNC) was issued to the Discharger on September 9, 2015. The NNC requested that the Discharger complete the recertification process by October 8, 2015.
6. On October 9, 2015 a second NNC was issued because the Discharger had not recertified by the October 8, 2015 due date specified in the first NNC. The second NNC requested that the Discharger complete the recertification process by November 6, 2015.
7. Despite numerous attempts by Regional Board staff to provide recertification assistance to the Discharger prior to the compliance date, the Discharger failed to recertify by November 6, 2015.
8. On December 17, 2015, the Discharger completed the recertification process.
9. Water Code section 13399.30 requires the Regional Water Board to identify, on an annual basis, dischargers of storm water that have not obtained coverage under the General Permit.
10. Pursuant to Water Code section 13399.30(a)(2), the Regional Water Board is required to provide a notice (NNC) to any person that discharges, proposes to discharge, or is suspected by the Regional Water Board of discharging storm water associated with industrial activity without coverage under the General Permit. A discharger is required to submit a notice of intent to obtain coverage to the Regional Water Board within 30 days from the date on which the first NNC is issued.
11. Pursuant to Water Code section 13399.30(b), the Regional Water is required to send a second NNC to a discharger that fails to submit the appropriate notice of intent to the Regional Water Board¹ within 30 days from the date on which the first NNC is sent pursuant to Water Code section 13399.30(a).
12. Pursuant to Water Code section 13399.30(c)(2), if a discharger fails to submit the required notice of intent to the Regional Water Board within 60 days from the date on which the first NNC was sent, Water Code section 13399.33(a)(1) and section 13300.33(a)(2) state, in relevant part, and require, the following:

[the Regional Board] shall impose civil liability administratively in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the regional board makes express findings setting forth the reasons for its failure to do so, based on the specific factors required to be considered pursuant to paragraph (2).

¹ The General Permit instructs dischargers of storm water to submit the required notice of intent to the State Water Board, not the Regional Water Board.

(2) In determining the amount of the penalty imposed under this section, the regional board shall consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits or savings resulting from the violation, and other matters as justice may require. These considerations shall be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.

13. The Regional Board finds that the assessment of \$3,500 in penalties, which is less than the amount established in paragraph (1) subdivision (a) of Water Code 13399.33, is appropriate based on the culpability of the Discharger. The Discharger communicated with Regional Board staff and made numerous efforts to recertify prior to the deadline. During that time, neither Regional Board staff nor the Discharger were able to correctly identify the technical problems which prevented the Discharger from using SMARTS successfully and recertifying. The Regional Board finds that the Discharger met its due standard of care in attempting to comply with the law prior to the occurrence of the violations. The Regional Board has considered the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions, and finds that, here, the stated reasons for reducing the mandatory penalty outweigh those needs.
14. Water Code section 13399.33(d) requires the recovery of costs incurred by the Regional Water Board for enforcement actions against dischargers who fail to submit the required NOI in accordance with Water Code section 13399.30. Staff costs of \$1,500 (10 hours @\$150/hour) are assessed.

SETTLEMENT

15. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order and Settlement Agreement to the Regional Water Board, or its delegatee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$3,500 plus \$1,500 in staff costs in liability upon the Discharger for a total assessment of \$5,000.
16. The Regional Water Board Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violation except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.

STIPULATIONS

This Stipulated Order is entered into by the Parties to resolve by consent and without further administrative proceedings alleged violations of Administrative Civil Liability Complaint No. R8-2016-0013 (Attachment A). The Parties incorporate Paragraphs 1 through 16 by this reference, as set forth fully herein, and stipulate to the entry of this Order as set forth below,

and recommend that the Regional Water Board issue this Stipulated Order to effectuate the settlement:

1. **Administrative Civil Liability Penalty:** Within thirty (30) days of adoption of this Stipulated Order, Discharger shall remit, by check, five thousand dollars (\$5,000) payable to the *State Water Resources Control Board Waste Discharge Permit Fund, ATTN: ACL Storm Water*, to the following address ("Order No. R8-2016-0029" shall be indicated on the check):

State Water Resources Control Board
Division of Administrative Services
ATTN: Accounting: Storm Water
1001 "I" Street, 18th Floor
Sacramento, CA 95814

A copy of the check shall also be mailed to the following address:

Michelle Beckwith
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

2. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that other violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
3. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
4. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein or which could have been asserted based on the specific facts alleged herein as of the effective date of this Stipulated Order ("Covered Matters"). The provisions of this Stipulation are expressly conditioned on Dischargers' payment of the administrative civil liability by the deadline specified in Stipulation #2.
5. **Public Notice:** The Parties acknowledge that the Settlement Agreement, as signed by the Parties, must be noticed for a 30-day public comment period prior to being presented to the Regional Water Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Water Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement

Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.

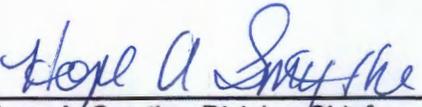
6. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.
7. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the violation listed herein. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.
8. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
9. **Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
10. **Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Water Board or its Executive Officer.
11. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Water Board's Executive Officer, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Water Board shall refund to the Discharger, within thirty (30) days of the effective date of such vacation, the sum of five thousand dollars (\$5,000), provided that the Discharger had paid the amount as

per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Water Board in any such subsequent administrative or judicial proceeding or hearing; or
 - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
12. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Water Board against the Discharger.
 13. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
 14. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
 15. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Regional Water Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
 16. **Water Boards not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

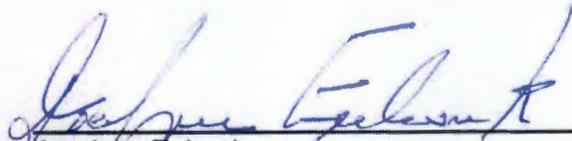
17. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
18. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
19. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Executive Officer
20. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
21. **Incorporated Attachments:** Attachment A, is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED²:



Hope A. Smythe, Division Chief
For the Santa Ana Regional Water Quality Control Board
Prosecution Team

3/15/16
Date



Jocelyne Eubank
For Modified Plastics

3/14/14
Date

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.
2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Santa Ana Regional Water Quality Control Board.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.

Kurt V. Berchtold
Executive Officer

Date